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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. [redacted] 67

RAYMOND JACKSON, AN INCOMPETENT PERSON BY MRS. JAMES A. HARRIS, GUARDIAN,

Petitioner,

vs.

THE CARTER OIL COMPANY, A CORPORATION, RUBY P. NORVELL, ALBERT NORVELL, CAROLYNE NORVELL, ALBERT NORVELL, CAROLYNE NORVELL, CLARK AND ANNIE PAULINE NORVELL,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, AND SUPPORTING BRIEF

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RAYMOND JACKSON, AN INCOMPETENT PERSON BY MRS. JAMES A. HARRIS, GUARDIAN,

Petitioner,

vs.

THE CARTER OIL COMPANY, A CORPORATION, RUBY P. NORVELL, ALBERT NORVELL, CAROLYNE NORVELL, ALBERT NORVELL, CAROLYNE NORVELL, CLARK AND ANNIE PAULINE NORVELL,

Respondents

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Summary Statement of Matter Involved

This petition involves and challenges the constitutionality, construction and application of the Act of Congress as amended, under date, June 25th, 1948, Section 265 of the Judicial Code (28 U.S.C.A. 379) as interpreted and applied

by the United States Circuit Court of Appeals for the Tenth Circuit; before amendment said section read:

> "The Writ of injunction shall not be granted by any Court of the United States, to stay proceedings in any court of the State except in cases where such injunction may be authorized by any law relating to proceedings in Bankruptcy."

This section was amended by Congress, or perhaps more accurately, recommended by the sub-committee of the Judiciary Committee in the nature of a revision approved by the House Appropriate Revision Committee; such action revised and codified reads:

> "A court of the United States may not grant an injunction to stay proceedings in a State Court, except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgment."

Any one acquainted with the inside history of this litigation, it would appear that instead of being an amendment by Congress, it was an attempt on the part of said Sub-committee, in reality to overrule the opinion of the Supreme Court in the cause of *Toucey* v. *N. Y. Life Insurance Company,* 314 U. S. 118, 86 Law Ed., page 100.

Quoting from the case of *Toucey* v. *New York Life Insurance Company,* 314 U. S. 118, 86 L. Ed. 100, and quoting from page 104 the Court said:

> "The language of the Act of 1793 was unqualified * * * nor shall a writ of injunction be granted to stay proceedings of any court of a State * * *. 1st. Stat. at L. 335, Chap. 22, "in the course of one hundred and fifty years, Congress has made few withdrawals from this sweeping prohibition."

The judicial history of this long span of years discloses that there were no important conflicts between the Federal

and State Governments. Most of the time they ran smoothly, each in its own sphere of jurisdiction, when any conflict arose a few words of admonition from this Highest Court smoothed the controversy in a manner that no trace could be seen.

> "The provisions of Section 265, have never been the subject of comprehensive legislative re-examination. Even the exceptions referable to Legislation have been incidental features of other statutory schemes, such as the removal and interpleader acts."
>
> "Section 265 is not an isolated instance of withholding from the Federal Courts equity powers possessed by Anglo American Courts. As part of the delicate adjustment required by our Federalist Congress has rigorously controlled the inferior courts in their relations to the Courts of the State. * * *
>
> The guiding consideration in the enforcement of the Congressional policy was expressed by Mr. Justice Campbell for the Court in Taylor *v.* Carryl, 20 How. (U. S.) 583, 597. 15 L. Ed. 1028-1032.
>
> "The legislation of Congress in organizing the judicial powers of the United States, exhibits much *circumspection in avoiding occasions* for placing the tribunals of the States and of the Union in any collusion. (Emphasis ours.)
>
> "We must be scrupulous in our regard for the limits within which Congress has confined the authority of the Court of its own creation."

Statement Disclosing Basis of Jurisdiction To Review

The statute under which relief is sought in this Court, is Section 240 of the Judicial Code as amended, 43 Statute, 938; 28 U. S. C., Sec. 347.

The trial court's jurisdiction existed upon the following basis:

On account of diversity of citizenship, the plaintiff a resident and citizen of Tulsa, Oklahoma, and the Carter Oil

Company a citizen of the State of West Virginia, having been incorporated under said State.

The opinion of the Circuit Court of Appeals, we believe, has not been officially reported, but a certified copy is included in the transcript, pages 92-94. The decision of the Circuit Court of Appeals was rendered on January 3rd, 1950.

An order of a Justice of this Court extending the time to file petition up to and including May 9th, 1950.

Ten certified copies of the transcript from the Circuit Court of Appeals accompany this petition.

Statement of Case

Since the Act of Congress of 1793, more than a century and a half, has made no drastic amendments to said Section; in substance, the language found in the Section, in which Congress revised, adopted, approved and codified the same, as interpreted by the Supreme Court for over a century, there was no change made in the law except to overrule the Supreme Court as recited herein.

The United States District Court of the Eastern District of Oklahoma on May 4th, 1944, entered a summary decree in favor of defendants and against the petitioner, wherein the Court included in said decree, the following injunctive order:

> "That the plaintiff herein, the so called 'California Raymond Jackson', be and he is hereby restrained and perpetually enjoined from filing further suits or prosecuting further litigation against the defendants or their successors in interest, based on the claim that he is Raymond Jackson, the allottee of the land involved in this case, to all of which exceptions are duly allowed," (R. 2)
>
> "Bower Broaddus, District Judge."

That on February 12th, Honorable James A. Harris, of Wagoner, Oklahoma, was by the County and Probate Court of Tulsa County, Oklahoma, duly appointed guardian for Raymond Jackson, an "incompetent", petitioner herein; subsequently Mr. Harris died and his wife Mrs. James A. Harris, was appointed and succeeded as guardian (R. 7-9).

Petition To Establish Heirship and Seeking Instructions In Behalf of the Guardian. (R. 9.)

January 24, 1947, James A. Harris, the guardian filed his petition in the guardianship proceeding, as above indicated, in the County Court, No. 13990, Tulsa County, Oklahoma, the purpose of which was to have the Court decree heirship in the Estate of Davis A. Jackson, deceased; to request instructions as to the guardian and to perpetuate the testimony of Rhina Jackson, surviving widow of Davis A. Jackson, deceased, who departed this life in 1939.

After the issues were joined in the petition filed in the County Court as alleged, respondents filed their motion directed to the petitioner, his guardian and attorneys, to show cause why they should not be adjudged guilty of contempt of Court in filing said petition in the County Court (R. 3-6).

Respondents in the trial court filed their verified response denying the material allegations in the motion of defendants, alleging affirmatively the purpose of said proceedings:

Petitioner, on February 17, 1949, filed his amended response in the United States District Court alleging the purpose of said proceedings in the County Court, seeking advice from the Court to the guardian, James A. Harris, whether or not to have his counsel investigate the validity of the injunction, if found to be within the jurisdiction of the Court, whether or not he should apply to this Honorable Court (U. S. District Court) or to the Circuit Court of

Appeals, for an order granting leave to file a petition to vacate said injunction in view of the fact that no appellate court had ever considered the "incompetent's" legal right to the property involved and in view of the further fact that no Court, Trial or Appellate, had ever considered or adjudicated the issue of fraud growing out of the conspiracy, bribery and perjury as alleged, which had been concealed in the breasts of the perpetrators for ten years, and until after the death of Davis A. Jackson in 1939, the death of his lawyers in 1941 and 1942, and after the latter dates, the wife, Rhina Jackson disclosed the conspiracy, the bribery and perjury in an affidavit. The lawyers for petitioner attempted to introduce the affidavits in the trial of petitioner's case in the U. S. District Court, in March, 1945, which the Court rightly held the affidavits were not competent testimony upon the merits. This is the only consideration the issue of fraud ever had on account of said injunction.

Respondents, defendants below, filed their reply to amended response, filed by respondents below, to the motion to show cause (R. 33).

Upon examination of said reply, it will be noted that defendants did not deny the charge of conspiracy, bribery and perjury as alleged in the amended response (R. 25).

Order overruling motion to show cause (R. 24-25).

Order sustaining motion to set aside order, overruling motion to show cause (R. 35-36).

Order granting injunction (R. 36).

> "Wherefore it is hereby ordered that the plaintiff, Raymond Jackson, Mrs. James A. Harris, his guardian, and their attorneys, F. E. Riddle and I. F. Bradley, Jr., and A. G. W. Sango, be, and they are hereby restrained and perpetually enjoined from further prosecuting in the County Court of Tulsa County, Oklahoma, the claim that said plaintiff, Raymond Jackson is the

son of Davis A. Jackson, deceased, and as such is the allottee of the land involved in this proceeding, and from filing further litigation against the defendants or their successors in interest, based on the claim that the plaintiff is Raymond Jackson, the allottee of the land involved in this case, to which order plaintiff excepts and exceptions are duly allowed.

BOWER BROADDUS,
District Judge."

The Subcommitte of Congress evidently overlooked or at least if failed to heed this important and wise admonition of this High Court, as recited herein.

Congress *to the contrary created opportunity* and encouraged action which is now calculated to induce conflict and litigation.

The language of Congress in the Amendment, vested a discretion in the hundreds of Circuit and District Judges, in granting injunctions in staying proceedings in the State Courts, both as to the character of proceedings enjoined and as to the stage and condition of the action when an injunction shall issue.

In the case of *Dugas* v. *American Surety Co.*, 300 U. S. 414-428, 81 L. Ed. 720, the Court said:

> "Such a bill may be brought in the Federal Court in aid of and to effectuate his prior judgment decree to the end either that the decree may be carried fully into execution or that it may be given fuller effect, but *subject to the qualification that the relief be not of a different kind or* different principle."
>
> Cited: Franch *vs.* Hay, French *vs.* Stuart, 22 Wall. 250; 22 L. Ed. 857; Route *vs.* Woolworth, 150 U. S. 411; 37 L. Ed. 1125. Julian *vs.* Central Trust Co., 193 U. S., 93. 48 L. Ed. 462. Madisonville Traction Co. *vs.* State Board Min. Co., 196 U. S. 339-345; 49 L. Ed. 1084; Wells *vs.* Eastern Ry. Co., 247 U. S. 214; 62

L. Ed. 1084. Wells *vs.* Largo Co. *vs.* Taylor, 254 U. S. 175; 65 L. Ed. 205-212.

It is difficult to see how a County or Probate Court with jurisdiction confined generally to the usual probate procedure, could try and render a judgment, which would not be a different kind of relief or involve different principle, from that rendered and involved in the Federal proceedings and decree.

Questions Presented

(a) May Congress grant power and authority to the United States District Court, to be exercised in its discretion, to perpetually enjoin a citizen of the State from instituting a proceeding in a County and Probate Court in the State; a court created by the State, exercising general probate jurisdiction, when the main purpose of such proceeding, as alleged, is to decree heirship; to have the Court to instruct the guardian of an incompetent, and to perpetuate the testimony of a witness, in the absence of any court with corresponding jurisdiction under the Federal Judiciary, upon the assumption and proposition that it is an attempt to re-try issues previously tried and adjudicated in the Federal District Court?

(b) The guardian of petitioner, an incompetent, filed his petition in the County and Probate Court, a court created by the State Constitution with general probate jurisdiction; the purpose of said proceedings in the main, was to have decreed heirship, in the estate of Davis A. Jackson, deceased, leaving more than a dozen children surviving. Petitioner claiming to be one of said children. The deceased leaving an estate of approximately $15,000.00; to seek instruction to the guardian; to perpetuate the testimony of the surviving wife. In the circumstances may the United States District Court under Section 2283 of Title

28 of the U. S. Code, entitled "Judicial Code and Judiciary" perpetually enjoin petitioner, his guardian and attorneys, from proceeding under said petition in the County Court?

(c) No important and drastic amendments have been enacted by Congress since the Judiciary Act of date, 1793, a span of more than a Century and a half; both the Federal and State Courts have operated and exercised their respective jurisdictions, side by side, each in its own sphere, with little friction and slight ground of complaint.

(d) There has been only one decision and opinion, so far as we are advised, based upon the change in the phraseology of Section 2283 of Title 28 of the Judicial Code, but we may expect other decisions and opinions in the future, until this High Court renders an opinion clarifying the language of the Amendment of Congress in controversy.

Reasons Relied On For Allowance of the Writ

(a) This High Court under the Act of Congress of 1793, and Amendments enacted thereto inauguarated and promulgated a rule as a guide to all inferior courts, authorizing in plain language and giving them power to protect their rightful jurisdiction, and judgments, and to fully execute and effectuate the same.

(b) This rule has been followed by this High Court many, many times and by the Circuit and District Courts throughout their jurisdiction, whenever an occasion made it necessary, hundreds of times. This rule of this Court in effect and substance in direct language enforcing the rule with little discretion, if any, vested in the Inferior Courts. What the Sub-committee did, or attempted to do, was, it appears through the so called amendment encroached upon this Court's jurisdiction and has undertaken to direct its own rule, in its own language to all inferior courts, and

Judges. This directive in the language of the Amendment, to the inferior courts and Judges, likely would appear as giving them more discretion where it was not intended, creating confusion, misunderstanding, and frequently giving encouragement of invasion of the jurisdiction and domain of County and Probate Courts.

It would seem that the decision and opinion of the Circuit Court of Appeals requires supervision of this Court to clarify the language of the Amended Act.

The United States Circuit Court of Appeals for the Tenth Circuit

(a) Rendered a decision and opinion sought to be reviewed, decided an important question of Federal law of procedure which has not been, but we believe should be settled by this Court;

(b) Said Court has decided a Federal question in a way probably in conflict with applicable decisions of this Court.

(c) And has so far departed from the accepted and usual course of Judicial proceedings, or so far sanctioned such departure by a Lower Court as to call for an exercise of this Court's power of supervision.

SUPPORTING BRIEF

Proposition I

The Trial Court Was Right in Dismissing and Holding for Naught the Motion and Citation to Show Cause for Three Reasons:

First: Because it was impossible for petitioner to retry the issues tried in the Federal Court for lack of jurisdiction in the County and Probate Court of Oklahoma.

Proposition II

Because respondents' judgment had long since been executed and fully effectuated, in that the Carter Oil Company for more than fifteen years had exclusive possession and control of its "ill gotten gain", receiving all the rents and profits therefrom unmolested.

Proposition III

In order for a litigant to retry an issue previously tried in the Federal Court, the State Court must have jurisdiction and authority to try the said issue upon the same principle and not upon a different kind of relief, from that tried in the Federal Court.

In the case of *Dugas* v. *American Surety Co.*, 300 United States, 414-428; 81 L. Ed. 720, the Court said:

> "Such a bill may be brought in the Federal Court in aid of and to effectuate his prior judgment decree to the end either that the decree may be carried fully into execution or that it may be given fuller effect, but subject to the *qualification that the relief be not of a different kind or different principle.*"
>
> Cited: French *vs.* Hay. Franch *vs.* Stuart, 22 Wall. 250; 22 L. Ed. 857; Route *vs.* Woolworth, 150 U. S. 411; 27 L. Ed. 1125; Julian *vs.* Central Trust Co., 193 U. S.

93; 48 L. Ed. 629. Madisonville Traction Co. *vs.* State Board Min. Co. 196 U.S. 339-345; 49 L. Ed. 462. Looney *vs.* Eastern Ry. Co., 247 U. S. 214; 62 L. Ed. 1084. Wells Fargo Co. *vs.* Taylor, 254 U. S. 175; 65 L. Ed. 205-212."

PROPOSITION IV

The remedy of contempt of court is penal in its nature, and is a severe remedy; should not be resorted to "successfully" unless the facts constituting the contempt are clearly established and bring the case clearly within the prohibited order of the court.

City of Campbell v. *Arkansas Power Co., Missouri Power Co.* (C. C. A. 8), 65 Fed. (2nd) 425-428. Sanborn, Circuit Judge, delivering the opinion of the court, the Court stated:

> "Process of contempt is a severe remedy, and should not be resorted to where the fair ground of doubt as to the wrongfulness of the defendants' conduct."
>
> Artificial Stone Paving Co. *vs.* Malitor, 113 U. S. 609-618; 28 Law Ed.

Quoting from the opinion sought to be reviewed in this proceeding, the Court said:

> "Prior to the Toucey decision, the law was generally understood and interpreted to the effect that the Federal Courts had the power to protect and effectuate their prior judgments by injunctions against the relitigation of cases and controversies, in State Courts."

This opinion has not yet been reported officially, we believe, but is found, "(R. 91-95)."

This excerpt lends support to our argument that Congress overruled the opinion in the *Toucey* case.

It is our deliberate judgment that the amendment complained of vests in the inferior courts too much discretion, vesting the trial judges and the Courts a great latitude in the exercise of their judgment, which may cause this

Court much unnecessary litigation, especially preliminary questions arising under petitions for Writs of Certiorari, and is likely to develop into a wide field of operation. We do not believe that under the Federal Judiciary Act and the amendments thereof, that it was ever contemplated in the withdrawal of the exceptions to the original Judicial Act and Judiciary, that neither the Congress nor this Court either, contemplated that such withdrawal would extend to the State, County and Probate Courts, for lack of proper jurisdiction to determine the same issue previously tried in the Federal Court.

In Oklahoma, we have seventy-seven Counties and Probate Courts, and if litigants and the Court may be enjoined from proceeding in one County, this leaves an opportunity and invitation for further litigants to enjoin proceedings in every other County and Probate Court. Not only this, but out of the forty-eight States there are probably an average of fifty Counties and Probate Courts in each State, which would leave the question open to extend to approximately twenty-five hundred Counties and Probate Courts, in which litigants might be induced to enjoin proceedings and litigants in many of the counties in the Nation.

THEREFORE, we respectfully pray that the Writ of Certiorari shall issue in this case and the statute under consideration at least clarified, if not fully reversed.

Respectfully submitted,

FINIS E. RIDDLE,
Mayo Building,
Tulsa, Oklahoma.
I. F. BRADLEY,
453 Minnesota Ave.,
Kansas City (4), Kansas.

STATE OF OKLAHOMA,
Tulsa County, ss:

Finis E. Riddle, counsel for the petitioner, and a member of the Bar of the Supreme Court of the United States of America, upon his oath states:

That the facts alleged and set forth in the petition for Writ of Certiorari, are true to the best of his knowledge and belief. Affiant further certifies that he believes the petition as a whole is well taken in law.

FINIS E. RIDDLE.

Subscribed and sworn to before me on this 6th day of May, 1950.

VERNA DE ARMAND,
Notary Public.

My Com. Exp. 7/7/52.

(8212)

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RAYMOND JACKSON, AN INCOMPETENT PERSON, BY MRS. JAMES A. HARRIS, GUARDIAN,

Petitioner,

vs.

THE CARTER OIL COMPANY, A CORPORATION, RUBY P. NORVELL, ALBERT NORVELL, CAROLYN NORVELL CLARKE, AND ANNIE PAULINE NORVELL,

Respondents.

ANSWER BRIEF OF RESPONDENTS TO PETITION FOR WRIT OF *CERTIORARI.*

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IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1949.

No. 815

RAYMOND JACKSON, AN INCOMPETENT PERSON, BY MRS. JAMES A. HARRIS, GUARDIAN,
Petitioner,
vs.
THE CARTER OIL COMPANY, A CORPORATION, RUBY P. NORVELL, ALBERT NORVELL, CAROLYN NORVELL CLARKE, AND ANNIE PAULINE NORVELL,
Responents.

ANSWER BRIEF OF RESPONDENTS TO PETITION FOR WRIT OF *CERTIORARI.*

For the second time this case comes to the Supreme Court on petitioner's application for writ of certiorari. His first application was filed in the October Term, 1946, in Case No. 747. Certiorari was therein denied on January 20, 1947. (*Raymond Jackson, an Incompetent,* v. *Carter Oil Co., et al.,* 329 U. S. 809, 91 L. ed. 690.)

By this second application petitioner attempts to have reviewed a judgment of the Court of Appeals, Tenth Circuit, entered on January 3, 1950 (R. 95-96). Therein the appellate court affirmed a judgment of the United States District Court for the Eastern District of Oklahoma entered on February 25, 1949, (R. 36-37) enjoining petitioner from further prosecuting in the County Court of Tulsa County, Oklahoma, the claim that he is Raymond Jackson, the allottee of the land involved in the litigation and the son of Davis A. Jackson, deceased.

Statement of the Case.

The history of this litigation will help to an understanding of the circumstances surrounding the Order entered by the Federal District Court on February 25, 1949. The opinion of the Court of Appeals sets this out briefly as follows:

> "The matter has been in the courts since 1932 and this is the third time that it has been before this court. The issue in all the litigation has been the identity of Raymond Jackson, a Seminole freedman, who was allotted the oil bearing lands involved in all the cases. The facts are fully set forth in the opinions of this court in the cases of *Jackson* v. *Jackson,* 67 F. (2d) 719, and *Jackson* v. *Carter Oil Co.,* 156 F. (2d) 726, and will not be repeated here. In the numerous actions, including this one, the appellant maintained that he was the Raymond Jackson to whom the land was allotted and that he was being deprived of the lands and the proceeds thereof by fraud and collusion. Each time these questions were presented to the trial court there resulted a finding and final judgment that he was not the allottee but was an imposter." (R. 91-92) (*Jackson* v. *Carter Oil Co., et al.,* 179 F. (2d) 524.)

It was in the light of this background that the Order and Decree of May 4, 1944, was entered, perpetually enjoining petitioner from prosecuting further litigation against the defendants based on the claim that he is Raymond Jackson, the allottee of the land involved in the proceeding. (R. 1 and 2) Also, it was in the light of this background that the Order of February 25, 1949, was entered.

From the Order and Decree of May 4, 1944, petitioner appealed to the Court of Appeals, Tenth Circuit, and the judgment of the District Court was there affirmed.

(*Jackson* v. *The Carter Oil Company, et al.*, 156 F. (2d) 726.) Following the disposition of said appeal by the Court of Appeals, petitioner filed in this Court his petition for writ of certiorari (October Term, 1946, No. 747), which petition, as heretofore indicated, was by this Court denied on the 20th day of January, 1947.

Shortly after the case was so disposed of in this Court, a petition was filed in the County Court of Tulsa County for the appointment of a guardian for petitioner, an incompetent. (R. 7-9) Upon the petition so filed a guardian was appointed and said guardian on February 12, 1947, filed in the guardianship proceedings a pleading which was designated "*Petition to Establish Heirship and Seeking Instructions on Behalf of the Guardian.*" Therein it was alleged that the ward, petitioner herein, was in fact the allottee of the 40 acres of land involved in the prior pending litigation. The declared purpose of the proceeding in the County Court was to further litigate the claim that petitioner was in fact the allottee of the land in question. (R. 9-16)

On March 7, 1947, respondents herein filed in the Federal District Court a motion requesting an order requiring petitioner, his guardian, and his attorneys to appear before the Court to show cause why they should not be adjudged guilty of contempt for violating provisions of the decree of May 4, 1944, and why they should not be enjoined from further prosecuting the proceedings in the state court. (R. 3-6)

On March 19, 1947, the court overruled this motion on the grounds that it was without jurisdiction to interfere with proceedings in the state court. (R. 23-24)

In denying respondents' motion to show cause the court followed the rule established in *Toucey* v. *New York Life*

Insurance Company, 314 U. S. 118, 86 L. ed. 100. Shortly after the revision and codification of the Judicial Code in 1948, the respondents filed their *motion to set aside order overruling motion to show cause,* and asked for the relief prayed for in the original motion. (R. 24-25) On January 27, 1949, the District Court sustained the motion to set aside the former order overruling the motion to show cause (R. 35-36), and on February 25, 1949, the District Court entered its order restraining and perpetually enjoining petitioner, his guardian and attorneys, from further prosecuting in the Tulsa County Court the claim that petitioner is the son of Davis A. Jackson, deceased, and as such the allottee of the land involved. (R. 36-37) The judgment of the District Court was unanimously affirmed by the Court of Appeals on January 3, 1950. (R. 95-96)

Then followed the filing of the petition for writ of certiorari in this Court.

ARGUMENT *and* AUTHORITIES.

Petitioner's reasons for certiorari are set forth on pages 9 and 10 of his petition. They are stated under two subdivisions; however, they are really but one, which is that the amendment of the Judicial Code in 1948, granting additional power to the Federal Court to protect its judgments, constitutes an encroachment upon the Supreme Court's jurisdiction and an attempt by Congress to establish its own rule as a guide to all inferior courts and the judges thereof, which rule, if followed, would tend to create confusion and misunderstanding.

The issues presented in this case are such as to fall naturally into two headings, which will be followed in the presentation of the argument and authorities in this brief, as follows:

PROPOSITION I: *The trial court had complete jurisdiction to enter its order of February 25, 1949, thereby protecting its former judgment.*

PROPOSITION II: *The appellant by attempting to relitigate in the County Court of Tulsa County issues repeatedly tried and disposed of in the Federal Court is violating the Order and Decree of May 4, 1944.*

PROPOSITION I.

The Trial Court had complete jurisdiction to enter its order of February 25, 1949, thereby protecting its former judgment.

In the order and decree of May 4, 1944, sustaining defendants' amended motion for summary judgment and dis-

missing plaintiff's amended complaint with prejudice, it was provided:

> "* * * that the plaintiff herein, the so-called 'California Raymond Jackson' be and he is hereby restrained and perpetually enjoined from filing further suits or prosecuting further litigation against the defendants, or their successors in interest, based on the claim that he is Raymond Jackson, the allottee of the land involved in this case." (R. 2)

Said order and decree has not been reversed, vacated or set aside but is still in full force and effect.

Prior to its repeal by the Act of June 25, 1948, Section 265 of the Judicial Code (28 U. S. C. A. 379) reads as follows:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

In construing said section of the code, the United States Supreme Court in 1941 in the case of *Toucey* v. *New York Life Insurance Company,* 314 U. S. 118, 86 L. ed. 100, held that the Federal Courts were without power to enjoin relitigation of cases and controversies in state courts, which had theretofore been fully adjudicated in Federal Courts. There was a vigorous dissenting opinion. It was upon the authority of this case that Judge Broaddus first overruled respondents' motion to show cause.

After said motion to show cause was overruled by the court, the Judicial Code was revised and codified. Incident to such revision the section above quoted was repealed and there was substituted therefor Section 2283 of Title

28, of the U. S. Code, entitled "Judicial Code and Judiciary," which reads as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The legislative history of this particular amendment clearly discloses the purpose thereby intended to be accomplished. The following is taken from the hearing before Subcommittee No. 1 of the House of Representatives:

> "*Stay of State Court Proceedings.* Section 2283 changes the construction which the Supreme Court put upon present 28 U. S. C., Section 379, in *Toucey* v. *New York Life Insurance Company,* (1941) 314 U. S. 44, 62 S. Ct. 6, 86 L. ed. 28, 135 A. L. R. 1222, where the Supreme Court ruled that a Federal Court could not enjoin relitigation of a matter in a State Court proceeding; in other words, the Federal District Court could not protect its judgment."

The Reviser's Notes also disclose the purpose intended by the amendment. The following is taken from said notes as they pertain to Section 2283:

> "*Section 2283—Section Revised.* Based on Title 28, U. S. C., 1940 Ed., Sec. 379 (Mar. 3, 1911, ch. 231, Sec. 265, 36 Stat. 1162).
>
> "An exception as to Acts of Congresss relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.
>
> "The phrase 'in aid of its jurisdiction' was added to conform to Section 1651 of this title and to make clear the recognized power of the Federal Courts to stay proceedings in state cases removed to the District Courts.

"The exceptions specifically include the words 'to protect or effectuate its judgments,' for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See *Toucey* v. *New York Life Insurance Co.*, 62 S. Ct. 139, 314 U. S. 118, 86 L. ed. 100. A vigorous dissenting opinion (62 S. Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change.)

"Therefore the revised section restores the basic law as generally understood and interpreted prior to the *Toucey* decision.

"Changes were made in phraseology."

From the foregoing it is quite clear that the very purpose of the revision of Section 2283 of Title 28 of the Judicial Code was to grant to the Federal Courts the specific authority to enjoin a relitigation of controversies in State Courts when such controversies have been theretofore fully adjudicated in the Federal Courts.

It is petitioner's position in the instant case that the Congress, by so amending the section of the Code referred to, has "encroached upon this Court's jurisdiction and has undertaken to direct its own rule, in its own language to all inferior courts, and judges." Petitioner's argument in this regard should be addressed to the Congress and not to this Court. If, as petitioner admits, Congress intended to grant this added power, the Federal Courts have no alternative but to proceed under the authority so conferred.

It seems apparent that by its Order of February 25, 1949, the District Court was but protecting and effectuating its former judgment of May 4, 1944. This was clearly with-

in the powers granted under Section 2283, Title 28, of the United States Code above quoted. Its jurisdiction to enter such an order is clear.

PROPOSITION II.

The appellant by attempting to relitigate in the County Court of Tulsa County issues repeatedly tried and disposed of in the Federal Court is violating the order and decree of May 4, 1944.

It is of first and primary importance in considering this proposition to review the petition filed by the petitioner in the County Court of Tulsa County to see just what issues are there presented as they affect the instant case.

Said petition is shown at pages 9-16 of the record. Therein the guardian alleges that his ward is Raymond Jackson, the allottee of the 40 acres in question; that he is the son of Davis A. and Rhina Jackson; that at the time of the death of Davis A. Jackson the record title to said 40-acre tract was in Davis A. and Rhina Jackson, but that said record title was fraudulent and void; that Raymond Jackson was in reality the beneficial owner of said land; that he had been cheated and defrauded out of his allotment by reason of the fact that Davis A. Jackson, his father, entered into a conspiracy with his attorneys, the purpose of which was to defraud Raymond and to cause the United States District Court to decree title thereto in Davis A. and Rhina Jackson; that to effectuate said conspiracy it was agreed that Davis A. and Rhina Jackson should disown Raymond and should appear in the Federal Court and testify that Raymond was not their son; that they so testified and did thereby cause the Federal Court to adjudicate and decree that said Raymond was an im-

postor and that their son had been killed by a freight train at Blue Mountain, Arkansas, on November 8, 1921; that the judgment of April 18, 1932, was induced by false testimony and conspiracy; that in January, 1939, petition was filed in the United States District Court for the Eastern District of Oklahoma to vacate and set aside the earlier judgment; that Judge KENNAMER in deciding said case adversely was influenced by statements of Rhina Jackson made off the record; that since the death of Davis A. Jackson in 1939 and the death of his attorneys, Norvell and Norvell, in 1942 and 1943, the mother, sisters and brother of Raymond have been released from the fear under which they had lived prior thereto and that certain of them had made affidavits changing their former testimony as to Raymond's identity; that on account of the fraud and false testimony in prior cases a doubt has been created as to the identity of Raymond; that it is proper and necessary for the County Court to determine the heirship in the guardianship proceeding and to determine the issue and question as to whether he is in reality Raymond Jackson, the son of Davis A. and Rhina Jackson and the allottee of the 40-acre tract in question.

By order of the County Court (R. 17) and summons served on respondents they were required to answer the petition so filed, failing which they were warned that judgment would be entered against them as prayed for in the petition. An amended petition was filed in the County Court of Tulsa County by said guardian (R. 42-60), and a second amended petition was thereafter filed (R. 60-71), the effect of which pleadings was to reaffirm and reallege the allegations contained in the original petition.

With the issues in mind as presented by the petitioner in the County Court let us again look to the order and de-

cree of May 4, 1944, to see whether or not that order was being violated. It will be recalled that in said order petitioner was restrained and perpetually enjoined from filing further suits and prosecuting further litigation against respondents based on the claim that he was Raymond Jackson, the allottee of the land involved. (R. 2)

Even a casual review of the proceedings in the Tulsa County Court discloses that petitioner was therein attempting to prosecute further litigation against the respondents based on the claim that he is Raymond Jackson, the allottee of the land involved. Under these circumstances, the trial court could do nothing but find that petitioner was violating the order and decree of May 4, 1944, and that he should be enjoined from further prosecuting claims asserted therein in violation of said order.

Petitioner in his brief would attempt to make it appear that the main purpose of the proceeding in the County Court of Tulsa County was to have there determined the heirship of Davis A. Jackson, deceased. In this regard it is interesting to note that a Petition for Probate of Will in the Matter of the Estate of Davis A. Jackson, Deceased, was filed in the County Court of Seminole County, Oklahoma, under date of May 31, 1939 (R. 77-79); that Certificate of Probate of Will was duly entered in said case under date of May 31, 1939 (R. 79-80); that Letters Testamentary were duly filed in said proceeding on June 12, 1939 (R. 82-83); and that a Decree Approving Final Accounting, Distributing Estate, Discharging Executrix and Discharging Bondsman was filed in said proceeding on August 8, 1943 (R. 83-88).

It seems quite clear that if the petitioner herein had desired in good faith to have litigated in the probate court the question of his right as an heir to any part or portion

of the estate of Davis A. Jackson, deceased, such litigation would have been in the County Court of Seminole County, Oklahoma, the court having jurisdiction of the estate of Davis A. Jackson, deceased, and not in a guardianship proceeding filed in Tulsa County, Oklahoma.

The record in this case is conclusive that petitioner, by the proceeding in the County Court of Tulsa County, Oklahoma, was attempting to relitigate therein issues previously tried and disposed of in the Federal Court. This was in clear violation of Judge BROADDUS' order and decree of May 4, 1944, and the trial court had no alternative but to enjoin petitioner and his attorneys from further prosecuting such claims. This the court did by its order of February 25, 1949.

Conclusion.

No one can say that petitioner has not had his day in court. Two times and at great length this case was tried before Judge WILLIAMS; three years after Judge WILLIAMS' second judgment against him, petitioner tried again to impeach the former decrees but the District Court refused him permission to file a bill of review; two years later Judge KENNAMER was called upon to pass on petitioner's claim; four years after Judge KENNAMER had held against him, petitioner attempted to relitigate his claim, this time before Judge BROADDUS; two years after Judge BROADDUS had held against him, petitioner made his sixth effort. This time Judge BROADDUS again entered an order against him. Added to all these are two judgments of the United States Court of Appeals, Tenth Circuit; then finally there is the prior refusal of the United States Supreme Court to entertain a writ of certiorari in the 1946 Term.

At some time there must be a finality of judgment and an end to litigation. The order and decree of May 4, 1944, should have ended this litigation, subject only to the petitioner's right of appeal. If petitioner is to be permitted now to start through the state courts to relitigate the issues heretofore repeatedly disposed of in the Federal Courts, there would, indeed, seem to be no end to this litigation. So long as the case is pending in any court, petitioner is in position to enlist new financial backers. The District Court has done its best to put a stop to the further maneuvering of this individual. The Court of Appeals, Tenth Circuit, has heretofore placed its stamp of disapproval upon the use of the courts for the purpose of furthering a "racket," such as has been through the years perpetrated by the petitioner upon the lawyers and laymen of Oklahoma and other states. We feel confident that this Court will promptly terminate this harassing litigation.

Under the rules of this Court a review on writ of certiorari is not a matter of right but of sound judicial discretion. It will be granted only where there are special and important reasons therefor. There are no such special or important reasons for granting such writ in this case. The application for writ of certiorari should be denied.

Respectfully submitted,

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